for Preliminary Injunction and Defendant's Motion to Dismiss or Summary Judgment. After a review of the entire file, it is this Court's opinion that Plaintiffs have not exhausted their administrative remedies and therefore this Court is without jurisdiction to rule on their complaints. "It is well settled that the provisions of Title VII of the Civil Rights Act applicable to claims of racial discrimination in federal employment are the exclusive and pre-emptive remedy for such claims." Hampton v. Internal Revenue Service, 913 F.2d 180, 183 (5th Cir. 1990), citing Brown v. General Serv. Admin., 425 U.S. 820, 829, 96 S.Ct. 1961, 1966 (1976).

We are unable to examine the merits of Plaintiff's EEO Complaint and in fact Higareda has stated he does not want this Court to consider the merits of his pending EEO charges by the statement in his complaint:

> "This complaint does not raise the merits of any pending administrative complaint. This complaint is filed for limited purposes of protecting Plaintiff's well-being and rights under the Act; and to protect and preserve the Commission's jurisdiction in these matters" Plaintiff's Complaint p. 2.

An employment discrimination claimant who chooses to pursue administrative review of federal agency's denial of his claim is required to exhaust that remedy before filing civil action in federal court. See Tolbert v. U.S., 916 F.2d 245 (5th Cir. 1990). Such exhaustion occurs if there is a final agency decision at which time Plaintiff has ninety (90) days to file a suit or secondly, if more than 180 days have elapsed since the filing of his formal EEO complaint without a final decision. 42 U.S.C. §2000e-16(c) (1992). Plaintiff Higareda's complaint sets forth no final agency decision upon which this Court can base its jurisdiction. However, it does

appear that an administrative action (the agency's review of decision pursuant to EEOC order to remand) has been pending for the requisite 180 days. Evidently Higareda does not wish this Court to address the merits of that claim. (see supra)

Plaintiff Trevino has not provided the Court with any evidence that he ever filed an EEO complaint concerning his removal. Alternatively, Defendant's Exhibit 2, signed and dated May 10, 1991, (after this complaint was filed) appears to be a settlement agreement that reinstates Trevino. It appears that the settlement agreement granted Trevino's requested relief.

The only proper defendant in Title VII claims is the agency head. Higareda's attempt to join his pendent state law claim against the individual defendants is not proper and was held improper in Bush v. Lucas, 462 U.S. 367, 103 S.Ct. 2404 (1983)

(barring recovery against federal employer's supervisor for defamation). In Hampton the 5th Circuit held that "Hampton cannot circumvent the administrative-exhaustion requirement by suing his supervisor individually in tort." Citing Bush at 390.

Plaintiff also requests relief to be granted under the Federal Torts Claim Act. This Court is unable to grant such relief, however, for virtually the same reasons as set out above. Plaintiff has failed to exhaust his administrative remedies as required by 28 U.S.C. §2675(a).

For the aforementioned reasons, this Court lacks jurisdiction pursuant to Rule 12 (b)(2) F.R.C.P. and is unable to grant the Plaintiff's requested relief. Plaintiff's Motion for Preliminary Injunction shall be DENIED and Defendant's Motion for Dismissal shall be GRANTED as to all the Defendants without prejudice to

Plaintiff. Because this Court lacks jurisdiction, it is not necessary to address Defendant's allegations regarding insufficiency of service of process or insufficient criteria for injunctive relief.

IT IS SO ORDERED.

Done this [17th] day of November, 1992 in Brownsville, Texas.

/s/
Filemon B. Vela
United States District Judge

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-7049
Summary Calendar

AUDIEL HIGAREDA and GERARDO TREVIÑO,
Plaintiffs-Appellants,

v.

UNITED STATES POSTAL SERVICE, ET AL.,
Defendants-Appellees.

Appeal from the United States
District Court
for the Southern District of Texas
(CA-B90-221)

Before DAVIS, JONES and DUHÉ, Circuit Judges:*

PER CURIAM:

In this Title VII-related case, appellants Higareda and Trevino only

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*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, has determined that this opinion should not be published.

the district court's denial of injunctive relief. They sought an injunction as a remedy for the postal service's alleged retaliation against them for having filed or asserted Title VII discrimination claims. Finding no error, we affirm.

The claims of Higareda and Trevino are not related. Postal service employee Higareda filed an EEOC complaint on September 7, 1990, alleging that he was retaliated against at a softball game over the Memorial Day weekend of that year. Although the game was not officially sponsored by the post office, his post office supervisor allegedly shut down his T-Shirt concession and harassed him. Trevino was fired by the post office on February 1, 1991. He appealed to the Merit Systems Protection Board that this termination was in retaliation for his earlier EEO complaints. Trevino settled the termination dispute with the post

office by entering a "last chance settlement" in May, 1991. Under the settlement, he remained a post office employee and dismissed the appeal. No EEO retaliation charge seems to have been filed.

Contrary to appellants' assertions, it is well settled that federal courts have no jurisdiction over federal employees' Title VII claims--including those for retaliation--until administrative remedies have been exhausted. Porter v. Adams, 639 F.2d 273, 276 (5th Cir. 1981), cited in Hampton v. IRS, 913 F.2d 180, 182 (5th Cir. 1990). This principle includes claims for injunctive relief based on alleged retaliation, inasmuch as a court has no authority to grant an injunction without some independent basis of federal jurisdiction. In Trevino's case, administrative remedies have not been exhausted, and the court properly concluded

that it lacked jurisdiction. There is no evidence that Trevino filed a Title VII retaliation claim at all over his firing. And, although he did allege retaliation in his appeal of termination to the Merit Systems Protection Board, that appeal was resolved in his favor by a consent and settlement, and MSPB retained jurisdiction. Thus, there was no adverse decision from which Trevino could appeal, much less seek injunctive relief.

Higareda's situation is somewhat different. Because 180 days elapsed after the filing of his EEO complaint, he exhausted his administrative remedies during the pendency of his case in federal court and became entitled to file suit. That fact does not, however, require remand or reconsideration of the denial of injunctive relief. Higareda's request for injunctive relief failed to specify the ongoing injuries he is suffering, the

nature of the defendants' activities sought to be enjoined, why injunction would be a superior remedy to relief at law, and what kind of injunctive relief was sought. The complaint was unverified. Further, Higareda dallied for months before obtaining proper service of process and never responded to the postal service's motion to dismiss or for injunctive relief. During all the months that the case was pending in the district court, Higareda could have cured any and all of these deficiencies. He did not do so. As an equitable matter, injunctive relief is simply not appropriate.

For these reasons, the judgment of the district court is AFFIRMED.